

16A Am. Jur. 2d Constitutional Law § 217

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Constitutional Law

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VI. Distribution of Powers of Federal and State Governments

A. Division of Powers

2. Sovereignty of States

§ 217. Sovereign power of states; equal footing doctrine

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 637, 638

West's Key Number Digest, [States](#) 1, 4, 4.4(1) to 4.4(3), 4.16(1) to 4.16(3)

The original 13 states existed prior to the adoption of the Federal Constitution and before that time possessed all the attributes of sovereignty.¹ All of these attributes except those surrendered by the formation of the Constitution and the amendments thereto have been retained.² However, the sovereign power of the states is necessarily diminished to the extent of the grants of power to the federal government in the Constitution,³ and it is subject to the restraints and limitations of the Constitution.⁴ The Constitution limited but did not abolish the sovereign powers of the states, which retained a residuary and inviolable sovereignty, and thus, both the federal government and the states wield sovereign powers, and that is why our system of government is said to be one of dual sovereignty.⁵

The United States' founding document specifically recognizes the states as sovereign entities.⁶ Any doubt regarding the constitutional role of the states as sovereign entities is removed by the Tenth Amendment, reserving those powers not delegated to the federal government to the states in their sovereign capacity, or to the people.⁷

New states, upon their admission into the Union, become invested with equal rights and are subject only to such restrictions as are imposed upon the states already admitted.⁸ Under this rule, which is referred to as the "equal footing" doctrine,⁹ there can be no state of the Union whose sovereignty or freedom of action is in any respect different from that of any other state,

including those states constituting the original 13 states,¹⁰ and entry into the Union of the United States by no means implies the loss of the distinct and individual existence by the states.¹¹

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Footnotes

- 1 Cummings v. Missouri, 71 U.S. 277, 18 L. Ed. 356, 1866 WL 9452 (1866).
- 2 Sossamon v. Texas, 563 U.S. 277, 131 S. Ct. 1651, 179 L. Ed. 2d 700 (2011); Parker v. Brown, 317 U.S. 341, 63 S. Ct. 307, 87 L. Ed. 315 (1943); Carter v. Carter Coal Co., 298 U.S. 238, 56 S. Ct. 855, 80 L. Ed. 1160 (1936).
The states possess sovereignty concurrent with that of the federal government, subject only to the limitations imposed by the Supremacy Clause. Tafflin v. Levitt, 493 U.S. 455, 110 S. Ct. 792, 107 L. Ed. 2d 887 (1990).
U.S. v. State of California, 297 U.S. 175, 56 S. Ct. 421, 80 L. Ed. 567 (1936).
- 3 Tafflin v. Levitt, 493 U.S. 455, 110 S. Ct. 792, 107 L. Ed. 2d 887 (1990).
- 4 As to express limitations of Constitution upon state sovereignty, see § 219.
- 5 Murphy v. National Collegiate Athletic Ass'n, 138 S. Ct. 1461, 200 L. Ed. 2d 854 (2018).
While the Federal Constitution rests on the principle that the people are sovereign, that does not mean that they have conferred all the attributes of sovereignty on a single government, and instead, the people, by adopting the Constitution, split the atom of sovereignty; when the original States declared their independence, they claimed the powers inherent in sovereignty, and the Constitution limited but did not abolish the sovereign powers of the states, which retained a residuary and inviolable sovereignty. Gamble v. United States, 139 S. Ct. 1960, 204 L. Ed. 2d 322 (2019).
- 6 United States Oil Recovery Site Potentially Responsible Parties Group v. Railroad Commission of Texas, 898 F.3d 497 (5th Cir. 2018).
- 7 United States Oil Recovery Site Potentially Responsible Parties Group v. Railroad Commission of Texas, 898 F.3d 497 (5th Cir. 2018).
- 8 Dick v. U.S., 208 U.S. 340, 28 S. Ct. 399, 52 L. Ed. 520 (1908); Bignell v. Cummins, 69 Mont. 294, 222 P. 797, 36 A.L.R. 634 (1923); State ex rel. Donahey v. Edmondson, 89 Ohio St. 93, 105 N.E. 269 (1913).
- 9 U.S. v. Nye County, Nev., 920 F. Supp. 1108 (D. Nev. 1996).
- 10 California ex rel. State Lands Com'n v. U. S., 457 U.S. 273, 102 S. Ct. 2432, 73 L. Ed. 2d 1 (1982), judgment entered, 459 U.S. 1, 103 S. Ct. 250, 74 L. Ed. 2d 1 (1982); Wolff v. U.S., 974 F.2d 702 (6th Cir. 1992).
- 11 Hall v. Hall, 138 S. Ct. 1118, 200 L. Ed. 2d 399, 100 Fed. R. Serv. 3d 179 (2018).

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VI. Distribution of Powers of Federal and State Governments

A. Division of Powers

2. Sovereignty of States

§ 218. Incidents of state sovereignty

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West's Key Number Digest, [States](#) 1, 4, 4.4(1) to 4.4(3), 4.16(1) to 4.16(3)

Under any government of limited powers, such as the United States of America and the 50 states which compose the Union, "sovereignty" is the supreme power which governs the body politic,¹ and the rights of sovereignty are those which are essential to the existence of government.²

The governments of the several states and the federal government are each sovereign, and yet, the sovereignty of the states is essentially different from the sovereignty of the federal government; the one is less supreme than the other.³

It has always been acknowledged in American constitutional law that the states, as sovereign entities, possess fully what is known as the police power, except as restrained by the United States Constitution⁴ and that the power of states to enact and enforce criminal laws under the police power is constitutional in nature.⁵ Because the health and safety of their citizens are primarily and, historically, matters of local concern, states traditionally have had great latitude under their police powers to legislate in order to protect the lives, limbs, health, comfort, and quiet of all persons.⁶ Each state's power to prosecute is derived from its inherent sovereignty, not from the federal government.⁷ However, as expansive as the government's police power may be, it is not without limit, and such limits are largely imposed by the Due Process Clause.⁸

The principle of sovereignty has also been the basis for the courts' recognition of the states' power to fashion tort law,⁹ marriage and divorce law,¹⁰ family law,¹¹ and property law.¹² The states retain many essential attributes of a sovereignty, including, in particular, the sovereign power to try causes in their courts.¹³

The power of taxation is inherent in sovereignty as an incident or attribute thereof, being essential to the existence of an independent government; thus, the right to tax exists apart from constitutions and, without being expressly conferred by the people, resides in the state governments as well as the national government.¹⁴

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Footnotes

- 1 Fidelity & Casualty Co. of New York v. Union Sav. Bank Co., 119 Ohio St. 124, 6 Ohio L. Abs. 386, 162 N.E. 420 (1928).
- 2 State v. Bob Manashian Painting, 121 Ohio Misc. 2d 99, 2002-Ohio-7444, 782 N.E.2d 701 (Mun. Ct. 2002).
- 3 Fidelity & Casualty Co. of New York v. Union Sav. Bank Co., 119 Ohio St. 124, 6 Ohio L. Abs. 386, 162 N.E. 420 (1928). While the states possess sovereignty concurrent with that of the federal government, their sovereignty is subject to the limitations imposed by the Supremacy Clause. *Tafflin v. Levitt*, 493 U.S. 455, 110 S. Ct. 792, 107 L. Ed. 2d 887 (1990).
- 4 *Rocky Mountain Farmers Union v. Corey*, 913 F.3d 940 (9th Cir. 2019); *City of Baton Rouge v. Ross*, 654 So. 2d 1311 (La. 1995). The states have broad authority to enact legislation for the public good, i.e., what has often been called a "police power," but the federal government, by contrast, has no such authority and can exercise only the powers granted to it, including the power to make "all Laws which shall be necessary and proper for carrying into Execution" the enumerated powers. *Bond v. U.S.*, 572 U.S. 844, 134 S. Ct. 2077, 189 L. Ed. 2d 1 (2014).
- 5 *Commonwealth of Puerto Rico v. U.S.*, 490 F.3d 50 (1st Cir. 2007). In our federal system, States possess primary authority for defining and enforcing criminal laws, including those prohibiting the gravest crimes. *Torres v. Lynch*, 136 S. Ct. 1619, 194 L. Ed. 2d 737 (2016).
- 6 *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 116 S. Ct. 2240, 135 L. Ed. 2d 700, 29 U.C.C. Rep. Serv. 2d 1077 (1996); *State ex rel. Miller v. Anthony*, 72 Ohio St. 3d 132, 1995-Ohio-39, 647 N.E.2d 1368 (1995). The police power does not have its genesis in a written constitution, and instead, it is an essential element of the social compact, an attribute of sovereignty itself, possessed by the states before the adoption of the Federal Constitution. *New Jersey Shore Builders Ass'n v. Township of Jackson*, 199 N.J. 38, 970 A.2d 992 (2009).
- 7 The police powers of a state are nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions, and although the precise contours of the principle are difficult to discern, it is clear that the police power encompasses the government's ability to seize and retain property to be used as evidence in a criminal prosecution. *AmeriSource Corp. v. U.S.*, 525 F.3d 1149 (Fed. Cir. 2008).
- 8 *State v. Proell*, 2007 ND 17, 726 N.W.2d 591 (N.D. 2007).
- 9 *AmeriSource Corp. v. U.S.*, 525 F.3d 1149 (Fed. Cir. 2008). *Martinez v. State of Cal.*, 444 U.S. 277, 100 S. Ct. 553, 62 L. Ed. 2d 481 (1980) (holding that a state's interest in fashioning its own rules of tort law is paramount to any discernible federal interest except perhaps the interest in protecting individual citizens from state action that is wholly arbitrary or irrational and that a state legislature has broad powers to control governmental tort liability limited only by the rule that it not act arbitrarily).
- 10 *U.S. v. Windsor*, 570 U.S. 744, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013).
- 11 *U.S. v. Sage*, 92 F.3d 101 (2d Cir. 1996). Under the Federal Constitution, a state legislature has the power to make rules to establish, protect, and strengthen family life. *Labine v. Vincent*, 401 U.S. 532, 91 S. Ct. 1017, 28 L. Ed. 2d 288 (1971).
- 12 *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 99 S. Ct. 802, 59 L. Ed. 2d 1 (1979).

- 13 Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County, 137 S. Ct. 1773, 198 L. Ed. 2d 395 (2017).
- 14 Commonwealth Edison Co. v. Montana, 453 U.S. 609, 101 S. Ct. 2946, 69 L. Ed. 2d 884 (1981).
Ohio's enforcement of its civil code by collecting money owed to it is a core sovereign function. [Sheriff v. Gillie](#), 136 S. Ct. 1594, 194 L. Ed. 2d 625 (2016).

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VI. Distribution of Powers of Federal and State Governments

A. Division of Powers

2. Sovereignty of States

§ 219. Express limitations upon state sovereignty

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Under the United States Constitution, specific limitations upon sovereignty of the states exist. Among the constitutional limitations upon sovereignty are provisions that no state shall enter into any treaty, alliance, or confederation, grant letters of marque and reprisal, emit bills of credit, make anything but gold and silver coin a tender in payment of debts, pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.¹ In addition, no state may, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; that the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the Treasury of the United States; and that all such laws shall be subject to the revision and control of the Congress.² Further, no state may, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state or with a foreign power, or engage in war, unless actually invaded or in such imminent danger as will not admit of delay.³

In addition, states' controls of elections for United States Senators and Representatives are subject to such laws as Congress may pass,⁴ and no religious test may ever be required as a qualification to any office or public trust under the United States.⁵

Article IV of the Constitution imposes certain obligations upon the states. Thus, the states must give full faith and credit to the public acts, records, and judicial proceedings of every other state and⁶ give the citizens of each state all privileges and immunities of citizens in the several states.⁷

Amendments to the United States Constitution have imposed many significant limitations upon the sovereignty of the states. In fact, the United States Supreme Court has said that the principles of federalism that might otherwise be an obstacle to congressional authority were necessarily overridden by the power to enforce the Civil War Amendments "by appropriate legislation"; those amendments were specifically designed as an expansion of federal power and an intrusion on state sovereignty.⁸ Thus, the 13th Amendment prevents the states from condoning slavery or involuntary servitude.⁹ The 14th Amendment tells the states that certain persons are citizens of the state, and prohibits the states from denying to citizens of the United States their privileges and immunities, and from denying to all persons due process of law and equal protection.¹⁰ The Supreme Court has held that the 10th Amendment, reserving nondelegated powers to the states, cannot save state legislation prohibited by the subsequently enacted 14th Amendment,¹¹ and that legislation enacted by Congress in furtherance of its duty under the 14th Amendment to see that equal protection of the laws is afforded to all citizens supersedes state laws in conflict with such duty.¹²

The 15th Amendment prohibits the states from denying the right to vote because of color,¹³ the 19th Amendment disallows the power of the states to deny the voting right because of gender,¹⁴ and the 24th Amendment prohibits the states from denying the right to vote in federal elections by requiring poll taxes.¹⁵

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Footnotes

- 1 U.S. Const. Art. I, § 10, cl. 1.
- 2 U.S. Const. Art. I, § 10, cl. 2.
- 3 U.S. Const. Art. I, § 10, cl. 3.
- 4 U.S. Const. Art. I, § 4, cl. 1.
- 5 U.S. Const. Art. VI, cl. 3.
- 6 U.S. Const. Art. IV, § 1.
- 7 U.S. Const. Art. IV, § 2, cl. 2.
- 8 City of Rome v. U. S., 446 U.S. 156, 100 S. Ct. 1548, 64 L. Ed. 2d 119 (1980).
- 9 U.S. Const. Amend. XIII.
- 10 U.S. Const. Amend. XIV.
- 11 Hunter v. Underwood, 471 U.S. 222, 105 S. Ct. 1916, 85 L. Ed. 2d 222 (1985).
- 12 New York Gaslight Club, Inc. v. Carey, 447 U.S. 54, 100 S. Ct. 2024, 64 L. Ed. 2d 723 (1980).
- 13 U.S. Const. Amend. XV.
- 14 U.S. Const. Amend. XIX.
- 15 U.S. Const. Amend. XXIV.

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VI. Distribution of Powers of Federal and State Governments

A. Division of Powers

2. Sovereignty of States

§ 220. Implied limitations upon state sovereignty

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There are many significant limitations upon state sovereignty implied from the Federal Constitution's express grant of certain powers to the federal government. In some instances, the grant is interpreted as exclusive and necessary, stripping the states of all power in the area.¹ Examples of the major subjects thus removed from the sphere of state influence or activity are bankruptcy and² patents.³

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Footnotes

¹ [Sturges v. Crowninshield](#), 17 U.S. 122, 4 L. Ed. 529, 1819 WL 2136 (1819).

² [In re Brentwood Outpatient, Ltd.](#), 43 F.3d 256, 1994 FED App. 0408P (6th Cir. 1994).

³ [Am. Jur. 2d, Patents](#) §§ 1, 3.

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VI. Distribution of Powers of Federal and State Governments

A. Division of Powers

2. Sovereignty of States

§ 221. Effect of sovereignty upon relations among states

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West's Key Number Digest, [States](#) 1 to 4.16(3), 5(1), 5(2)

While for all national purposes embraced by the Federal Constitution, the states and the citizens thereof are one, united under the same sovereign authority, and governed by the same laws, in all other respects, the states are necessarily foreign to and independent of each other¹ when regarded as local governments.² The sovereignty of each state implies a limitation on the sovereignty of all sister states, a limitation express or implicit in both the original scheme of the Constitution as well as the 14th Amendment.³ The Constitution reflects implicit alterations to the states' relationships with each other, confirming that they are no longer fully independent nations.⁴

A state is generally prohibited from asserting legislative power over parties and activities wholly beyond its borders,⁵ and the principle that state statutes generally have no extra-territorial effect remains a foundation of the respect for individual sovereignty the states must share with one another.⁶ A state may validly regulate activities, persons, and property within its jurisdiction, with knowledge that it will thereby influence matters beyond such jurisdiction, and that the influence will be far-reaching, where such regulation is vital to the welfare of the state's inhabitants, and where external consequences are but incidental to the solution of internal problems,⁷ so long as its regulation does not violate a valid federal statute.⁸ However, a state's sovereignty over persons, property, and activities extends only within the state's geographical borders, and therefore, its laws have no operation in another state except as allowed by the other state or by the principle of comity.⁹ Comity is a principle under which the courts

of one state give effect to the laws of another state, not as a rule of law but rather out of deference or respect.¹⁰ Courts apply comity to foster cooperation, promote harmony, and build good will.¹¹

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Footnotes

- 1 Buckner v. Finley, 27 U.S. 586, 7 L. Ed. 528, 1829 WL 3160 (1829).
- 2 Bank of U.S. v. Daniel, 37 U.S. 32, 9 L. Ed. 989, 1838 WL 3951 (1838).
- 3 Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County, 137 S. Ct. 1773, 198 L. Ed. 2d 395 (2017); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980).
- 4 Franchise Tax Board of California v. Hyatt, 139 S. Ct. 1485, 203 L. Ed. 2d 768 (2019).
- 5 Midwest Title Loans, Inc. v. Ripley, 616 F. Supp. 2d 897 (S.D. Ind. 2009), aff'd, 593 F.3d 660, 73 A.L.R.6th 741 (7th Cir. 2010).
The Constitution does not permit one state to project its regulatory regime into the jurisdiction of another state. *Senne v. Kansas City Royals Baseball Corp.*, 934 F.3d 918, 104 Fed. R. Serv. 3d 773 (9th Cir. 2019). All states enjoy equal sovereignty, and may not regulate and control activities wholly beyond their boundaries. *Rocky Mountain Farmers Union v. Corey*, 913 F.3d 940 (9th Cir. 2019).
- 6 A state cannot punish conduct that does not occur within its borders or cause any harmful effects within its borders. *Logan Farms v. HBH, Inc.* DE, 282 F. Supp. 2d 776 (S.D. Ohio 2003).
- 7 Doctors Hosp. of Augusta, L.L.C. v. CompTrust AGC Workers' Compensation Trust Fund, 371 S.C. 5, 636 S.E.2d 862 (2006).
- 8 Pacific Coast Dairy v. Department of Agriculture, 19 Cal. 2d 818, 123 P.2d 442 (1942), rev'd on other grounds, 318 U.S. 285, 63 S. Ct. 628, 87 L. Ed. 761 (1943).
- 9 A state may place a tax on coal mined in the state even though that increases the price of the coal shipped to and purchased by another state. *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 101 S. Ct. 2946, 69 L. Ed. 2d 884 (1981).
- 10 Arizona Public Service Co. v. Snead, 441 U.S. 141, 99 S. Ct. 1629, 60 L. Ed. 2d 106 (1979).
- 11 Republic Properties Corp. v. Mission West Properties, LP, 391 Md. 732, 895 A.2d 1006 (2006).
- 12 Benenson v. Commissioner of Internal Revenue, 887 F.3d 511 (1st Cir. 2018); Center for Auto Safety v. Goodyear Tire & Rubber Company, 247 Ariz. 567, 454 P.3d 183 (Ct. App. Div. 1 2019); Corvel Corporation v. Homeland Insurance Company of New York, 112 A.3d 863 (Del. 2015); Patel v. Krushna SS L.L.C., 2018-Ohio-263, 106 N.E.3d 169 (Ohio Ct. App. 8th Dist. Cuyahoga County 2018); *State of New Mexico v. Caudle*, 108 S.W.3d 319 (Tex. App. Tyler 2002).
Comity is not a rule of law but a voluntary decision by one state to defer to the policy of another, especially in the face of a strong assertion of interest by the other jurisdiction. *Boudreax v. State, Dept. of Transp.*, 11 N.Y.3d 321, 868 N.Y.S.2d 575, 897 N.E.2d 1056 (2008).
As to comity, generally, see *Am. Jur. 2d, Conflict of Laws* §§ 11 to 13.
Hansen v. Scott, 2004 ND 179, 687 N.W.2d 247 (N.D. 2004).

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VI. Distribution of Powers of Federal and State Governments

B. Implied and Inherent Powers of Federal Government

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A.L.R. Index, Supremacy Clause

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VI. Distribution of Powers of Federal and State Governments

B. Implied and Inherent Powers of Federal Government

§ 222. Implied powers of federal government

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West's Key Number Digest, [States](#) 4, 4.16(1)

West's Key Number Digest, [United States](#) 201, 203

Although the federal government is one of delegated and enumerated powers,¹ it is universally recognized that which is implied in the Constitution is as much a part of it as that which is expressed.² Accordingly, a power may be implied whenever necessary to give effect to a power expressly granted.³ It is therefore recognized that it is not indispensable to the existence of any power claimed for the federal government that it can be found specified in the words of the Constitution or that it is clearly and directly traceable to some one of the specified powers. Its existence may be deduced fairly from more than one of the substantive powers expressly defined or from them all combined.⁴

In international and foreign affairs, the federal government need not rely upon any affirmative grants of power in the Constitution inasmuch as it has all the powers needed to effectively operate as a sovereign in international relations.⁵ Other "sovereign" powers include:

- The power to protect each state from foreign invasions⁶
- The power to make such international agreements as do not constitute treaties⁷
- The power necessary for the government to successfully honor its obligations to other nations under the law of nations⁸

- The power to protect persons in federal employment⁹
- The power to protect the integrity of all federal elections¹⁰
- The power to protect individuals' federally created¹¹ or federally guaranteed¹² rights

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Footnotes

- 1 § 213.
- 2 Carter v. Carter Coal Co., 298 U.S. 238, 56 S. Ct. 855, 80 L. Ed. 1160 (1936); International Shoe Co. v. Pinkus, 278 U.S. 261, 49 S. Ct. 108, 73 L. Ed. 318 (1929).
- 3 Mackenzie v. Hare, 239 U.S. 299, 36 S. Ct. 106, 60 L. Ed. 297 (1915); House v. Mayes, 219 U.S. 270, 31 S. Ct. 234, 55 L. Ed. 213 (1911).
- 4 The Ku Klux Cases, 110 U.S. 651, 4 S. Ct. 152, 28 L. Ed. 274 (1884); Legal Tender Cases, 79 U.S. 457, 20 L. Ed. 287, 1870 WL 12742 (1870).
- 5 U.S. v. Pink, 315 U.S. 203, 62 S. Ct. 552, 86 L. Ed. 796 (1942); U.S. v. Curtiss-Wright Export Corporation, 299 U.S. 304, 57 S. Ct. 216, 81 L. Ed. 255 (1936).
- 6 Padavan v. U.S., 82 F.3d 23 (2d Cir. 1996).
- 7 The invasion clause is intended to protect states in situations where they are exposed to armed hostility from another political entity, not where they experience increased costs from the intrusion of illegal immigrants. State of Cal. v. U.S., 104 F.3d 1086 (9th Cir. 1997).
- 8 The United States, as sovereign, has inherent authority to protect, and a paramount interest in protecting, its territorial integrity. United States v. Molina-Isidoro, 267 F. Supp. 3d 900 (W.D. Tex. 2016), judgment aff'd, 884 F.3d 287 (5th Cir. 2018).
- 9 B. Altman & Co. v. U.S., 224 U.S. 583, 32 S. Ct. 593, 56 L. Ed. 894 (1912).
- 10 U.S. v. Arjona, 120 U.S. 479, 7 S. Ct. 628, 30 L. Ed. 728 (1887).
- 11 Cunningham v. Neagle, 135 U.S. 1, 10 S. Ct. 658, 34 L. Ed. 55 (1890).
- 12 Burroughs v. U.S., 290 U.S. 534, 54 S. Ct. 287, 78 L. Ed. 484 (1934).
- In re Quarles, 158 U.S. 532, 15 S. Ct. 959, 39 L. Ed. 1080 (1895); U.S. v. Waddell, 112 U.S. 76, 5 S. Ct. 35, 28 L. Ed. 673 (1884); The Ku Klux Cases, 110 U.S. 651, 4 S. Ct. 152, 28 L. Ed. 274 (1884).
- In re Quarles, 158 U.S. 532, 15 S. Ct. 959, 39 L. Ed. 1080 (1895); Civil Rights Cases, 109 U.S. 3, 3 S. Ct. 18, 27 L. Ed. 835 (1883).

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16A Am. Jur. 2d Constitutional Law § 223

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Constitutional Law

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VI. Distribution of Powers of Federal and State Governments

B. Implied and Inherent Powers of Federal Government

§ 223. Implied congressional powers and discretion

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[Construction and Application by U.S. Supreme Court of Necessary and Proper Clause of U.S. Constitution—U.S. Const. Art. I, s8, cl. 18, 65 A.L.R. Fed. 2d 161](#)

The general principles which govern the doctrine of implied powers find important application in defining the limits of congressional power. The Constitution of the United States includes a provision¹ specifically empowering Congress to enact all laws which may be necessary and proper to carry into effect the powers expressly granted to it.² However, the powers which the Constitution grants are expressed in general terms, leaving to Congress, from time to time, the adoption of its own means to effectuate legitimate objects and to mold and model the exercise of its powers as its own wisdom and the public interests require.³ Pursuant to the Necessary and Proper Clause, Congress is left with large discretion as to the means that may be employed in executing a given power.⁴ Thus, Congress, in the exercise of sound discretion, must determine in what manner it will exercise a power which it possesses.⁵

It is firmly established that grants of powers should be so construed as to give full efficacy to those powers and enable Congress to use such means as it deems necessary to carry them into effect.⁶ For instance, although the Constitution makes few explicit references to federal criminal law, the Necessary and Proper Clause nonetheless authorizes Congress, in the implementation of other explicit powers, to create federal crimes, to confine offenders to prison, to hire guards and other prison personnel, to provide prisoners with medical care and educational training, to ensure the safety of those who may come into contact with prisoners, to ensure the public's safety through systems of parole and supervised release, and, where a federal prisoner's mental condition so requires, to confine that prisoner civilly after the expiration of his or her term of imprisonment.⁷ Where an Act of Congress is not prohibited and is really calculated to effect any of the objects entrusted to the federal government, the courts will not undertake to inquire into the degree of its necessity since this would be beyond the province of the judicial department and would trespass on legislative ground.⁸

However, there are limits to the implied powers of Congress. If the means employed should have no real, substantial relation to the public objects which government may legally accomplish, if they should be arbitrary and unreasonable beyond the necessities of the case or if Congress, in the execution of its powers, should adopt measures which are prohibited by the Constitution, such enactments would unquestionably be held unconstitutional and void.⁹ Thus, Congress cannot, under the pretext of executing delegated power, pass laws for the accomplishment of objects not entrusted to the federal government.¹⁰ The states have broad authority to enact legislation for the public good, i.e., what has often been called a "police power," but the federal government, by contrast, has no such authority and can exercise only the powers granted to it, including the power to make "all Laws which shall be necessary and proper for carrying into Execution" the enumerated powers.¹¹

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Footnotes

- ¹ U.S. Const. Art. I, § 8.
- ² *U.S. v. Comstock*, 560 U.S. 126, 130 S. Ct. 1949, 176 L. Ed. 2d 878, 65 A.L.R. Fed. 2d 667 (2010); *McGrain v. Daugherty*, 273 U.S. 135, 47 S. Ct. 319, 71 L. Ed. 580, 50 A.L.R. 1 (1927); *Neely v. Henkel*, 180 U.S. 109, 21 S. Ct. 302, 45 L. Ed. 448 (1901).
Congress may legislate to the extent necessary and proper for the more effective exercise of a granted power. *Reina v. U.S.*, 364 U.S. 507, 81 S. Ct. 260, 5 L. Ed. 2d 249 (1960).
- ³ *Dillon v. Gloss*, 256 U.S. 368, 41 S. Ct. 510, 65 L. Ed. 994 (1921); *First Nat. Bank of Bay City v. Fellows ex rel. Union Trust Co.*, 244 U.S. 416, 37 S. Ct. 734, 61 L. Ed. 1233 (1917).
- ⁴ *U.S. v. Kebodeaux*, 570 U.S. 387, 133 S. Ct. 2496, 186 L. Ed. 2d 540 (2013).
- ⁵ *Northern Securities Co. v. U.S.*, 193 U.S. 197, 24 S. Ct. 436, 48 L. Ed. 679 (1904); *Champion v. Ames*, 188 U.S. 321, 23 S. Ct. 321, 47 L. Ed. 492 (1903).
As to the analogous discretion of state legislatures in selecting the means to carry out their police powers, see § 374.
- ⁶ *James Everard's Breweries v. Day*, 265 U.S. 545, 44 S. Ct. 628, 68 L. Ed. 1174 (1924); *Jacob Ruppert, Inc. v. Caffey*, 251 U.S. 264, 40 S. Ct. 141, 64 L. Ed. 260 (1920).
- ⁷ *U.S. v. Kebodeaux*, 570 U.S. 387, 133 S. Ct. 2496, 186 L. Ed. 2d 540 (2013).
- ⁸ *McGrain v. Daugherty*, 273 U.S. 135, 47 S. Ct. 319, 71 L. Ed. 580, 50 A.L.R. 1 (1927); *Lambert v. Yellowley*, 272 U.S. 581, 47 S. Ct. 210, 71 L. Ed. 422, 5 Ohio L. Abs. 88, 49 A.L.R. 575 (1926).
- ⁹ *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).
- ¹⁰ *Linder v. U.S.*, 268 U.S. 5, 45 S. Ct. 446, 69 L. Ed. 819, 39 A.L.R. 229 (1925); *State of Kan. v. State of Colo.*, 206 U.S. 46, 27 S. Ct. 655, 51 L. Ed. 956 (1907).
Congressional-spending programs that are enacted in pursuit of general welfare and unambiguously condition state's acceptance of federal funds on reasonably related requirements are constitutional unless they are either independently prohibited or coercive. *Pace v. Bogalusa City School Bd.*, 403 F.3d 272, 196 Ed. Law Rep. 791 (5th Cir. 2005).

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A.L.R. Index, Constitutional Law

A.L.R. Index, Federal Government

A.L.R. Index, Separation of Powers

A.L.R. Index, States

A.L.R. Index, Supremacy Clause

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16A Am. Jur. 2d Constitutional Law § 224

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VI. Distribution of Powers of Federal and State Governments

C. Interference and Conflicts Between State and Federal Governments

1. Noninterference Between Federal and State Governments

§ 224. Basic rule of noninterference between state and federal governments; anticommandeering principle

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West's Key Number Digest, [Constitutional Law](#) 2330 to 2333

West's Key Number Digest, [States](#) 4, 4.4(1), 4.16(1) to 4.16(3)

The national and state governments are each required to exercise their powers so as not to interfere with the free and full exercise of the powers of the other.¹ Thus, no state may interfere with the free and unembarrassed exercise by the federal government of all powers conferred upon it.² Moreover, in situations where federal and local enactments overlap in their effects on nongovernmental activities, to the extent possible, there must be a reconciliation of both statutory schemes rather than invalidating one completely.³

The states are not mere political subdivisions of the United States, and state governments are neither regional offices nor administrative agencies of the federal government; the Federal Constitution instead leaves to the several states a residuary and inviolable sovereignty, reserved explicitly to the states by the Constitution's 10th Amendment with which the federal government may not interfere.⁴ Therefore, whenever the federal power is exercised within what would otherwise be the domain of state power, it should invade the state's power as little as possible, and the justification for its exercise must clearly appear.⁵ Impermissible interference with state sovereignty is not within the enumerated constitutional powers of the National Government, and action that exceeds the National Government's enumerated powers undermines the sovereign interests of States.⁶

The Constitution does not give Congress any authority to require the states to regulate, no matter how powerful the federal interests that may be involved in a particular matter; rather, the Constitution gives Congress authority in many instances to regulate certain matters directly and to preempt contrary state regulation.⁷ It has been observed, in this connection, that certain kinds of federal interference, such as the coercive commandeering of the states' legislative processes that effectively compels the states to adopt a federal regulatory program, are by their very nature such a major interference as to violate the 10th Amendment regardless of how light a burden is imposed on state officials.⁸ While Congress has substantial powers to govern the Nation directly, including in areas of intimate concern to the states, the Constitution has never been understood to confer upon Congress the ability to require the states to govern according to Congress's instructions.⁹

An anticommandeering principle derived from the Tenth Amendment prohibits the federal government from compelling the states to enact or administer a federal regulatory program.¹⁰ Even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the states to require or prohibit those acts, and Congress may not simply commandeer the legislative processes of the states by directly compelling them to enact and enforce a federal regulatory program.¹¹ Apart from the clear prohibition against the federal government directing the states to legislate or to regulate, the severity of the burden placed on the states by the federal government and the degree of interference with their sovereign powers is the touchstone for determining whether national legislation is so onerous as to threaten the effectiveness of the states in our federal system.¹² With respect to interference by the federal government with a state's exercise of its powers, the general rule is that Congress may not settle the public policy of any state as to intrastate matters¹³ though in the exercise of constitutional powers, Congress may by its statutes declare policy for both the people and the state.¹⁴

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Footnotes

¹ *Pacific Co. v. Johnson*, 285 U.S. 480, 52 S. Ct. 424, 76 L. Ed. 893 (1932); *Boeing Aircraft Co. v. Reconstruction Finance Corp.*, 25 Wash. 2d 652, 171 P.2d 838, 168 A.L.R. 539 (1946).

² *Mayo v. U.S.*, 319 U.S. 441, 63 S. Ct. 1137, 87 L. Ed. 1504, 147 A.L.R. 761 (1943); *Pacific Coast Dairy v. Department of Agriculture of Cal.*, 318 U.S. 285, 63 S. Ct. 628, 87 L. Ed. 761 (1943).

³ *Don't Tear It Down, Inc. v. Pennsylvania Ave. Development Corp.*, 642 F.2d 527 (D.C. Cir. 1980).

⁴ *New York v. U.S.*, 505 U.S. 144, 112 S. Ct. 2408, 120 L. Ed. 2d 120 (1992).

⁵ *Gregory v. Ashcroft*, 501 U.S. 452, 111 S. Ct. 2395, 115 L. Ed. 2d 410 (1991); *Perez v. Cuccinelli*, 949 F.3d 865 (4th Cir. 2020); *In re Grand Jury Investigation*, 315 F. Supp. 3d 602 (D.D.C. 2018), order aff'd, 916 F.3d 1047 (D.C. Cir. 2019).

When legislation affects the federal balance, the requirement of a clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision. *Bond v. U.S.*, 572 U.S. 844, 134 S. Ct. 2077, 189 L. Ed. 2d 1 (2014).

It is incumbent upon the federal courts to be certain of Congress's intent before finding that a federal law overrides the usual constitutional balance of federal and state powers. *New York v. U.S.*, 505 U.S. 144, 112 S. Ct. 2408, 120 L. Ed. 2d 120 (1992).

When Congress intends to alter the usual constitutional balance between the states and the federal government, it must make its intention to do so unmistakably clear in the language of the statute. *Raygor v. Regents of University of Minnesota*, 534 U.S. 533, 122 S. Ct. 999, 152 L. Ed. 2d 27 (2002).

⁶ *Bond v. U.S.*, 564 U.S. 211, 131 S. Ct. 2355, 180 L. Ed. 2d 269 (2011).

⁷ *New York v. U.S.*, 505 U.S. 144, 112 S. Ct. 2408, 120 L. Ed. 2d 120 (1992).

Under the 10th Amendment, the federal government which has considerable power to regulate individuals directly and to encourage states to adopt certain legislative programs cannot require states to govern according to its instructions. *State of N.J. v. U.S.*, 91 F.3d 463 (3d Cir. 1996).

Congress is free, pursuant to its Commerce Clause power, to combat lead contamination in drinking water by regulating drinking water coolers that move in interstate commerce; however, such regulation must operate

directly upon the people and not the states as conduits to the people. [ACORN v. Edwards](#), 81 F.3d 1387, 108 Ed. Law Rep. 1080 (5th Cir. 1996).

8 [State of Tex. v. U.S.](#), 106 F.3d 661 (5th Cir. 1997).

9 [City of Chicago v. Sessions](#), 321 F. Supp. 3d 855 (N.D. Ill. 2018).

10 [State v. Department of Justice](#), 951 F.3d 84 (2d Cir. 2020).

Under the Tenth Amendment, federal officers may not conscript or commandeer state officials into administering and enforcing a federal regulatory program; in particular, the federal government may neither issue directives requiring the states to address particular problems, nor command the states' officers, or those of their political subdivisions, to administer or enforce a federal regulatory provision. [U.S. v. White](#), 782 F.3d 1118 (10th Cir. 2015).

11 [Murphy v. National Collegiate Athletic Ass'n](#), 138 S. Ct. 1461, 200 L. Ed. 2d 854 (2018).

12 [Frank v. U.S.](#), 78 F.3d 815 (2d Cir. 1996), cert. granted, judgment vacated on other grounds, 521 U.S. 1114, 117 S. Ct. 2501, 138 L. Ed. 2d 1007 (1997).

13 [Riviello v. Journeymen Barbers, Hairdressers and Cosmetologists' Intern. Union of America, Local No. 148](#), 88 Cal. App. 2d 499, 199 P.2d 400 (1st Dist. 1948).

14 [Miller v. Municipal Court of City of Los Angeles](#), 22 Cal. 2d 818, 142 P.2d 297 (1943).

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VI. Distribution of Powers of Federal and State Governments

C. Interference and Conflicts Between State and Federal Governments

1. Noninterference Between Federal and State Governments

§ 225. Cooperative federalism between state and federal governments

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 2330 to 2333

West's Key Number Digest, [States](#) 4.19

Despite the basic rule of noninterference,¹ the Federal Constitution is not to be construed so as to limit the variety of arrangements which are possible through the voluntary and cooperative actions of individual states with a view towards increasing harmony within the federalism created by the Constitution.² In a scheme involving cooperative federalism, federal courts should recognize the considered role of state agencies that have accepted Congress's invitation to become crucial partners in administering federal regulatory schemes.³ Conflicts between state and federal regulations are not to be sought where none clearly exist.⁴

Cooperative federalism is a doctrine that allows the states, within limits established by federal minimum standards, to enact and administer their own regulatory programs, structured to meet their own particular needs.⁵ Where the regime at issue is one of cooperative federalism, which requires a state or locality to comply with the federal administrative agency's regulations and rulings, it is the federal agency that is entitled to deference, when such is appropriate, in interpreting its own regulations.⁶

At one and the same time, there are constitutionally permissible methods, short of outright coercion, by which Congress may urge the states to cooperate and to adopt legislative programs and uniform regulatory schemes consistent with federal interests.⁷ These methods include attaching conditions to the receipt of federal funds and, where Congress has authority to regulate private activity under the Commerce Clause, offering states the choice of regulating that activity according to federal standards or having state laws preempted by federal regulation as part of a program of "cooperative federalism."⁸ While the Tenth Amendment's

anticommandeering principle prohibits Congress from regulating the states, Congress's constitutional powers, notably under the Spending Clause, do allow Congress to fix the terms on which it will disburse federal money to the states, and by setting such terms, Congress can influence a state's policy choices, and even implement federal policy it could not impose directly under its enumerated powers.⁹ Further, it is not a violation of the Constitution or an interference with state sovereignty for the federal government to provide monetary incentives for compliance by a state or states with a federal regulatory scheme since the states thereby retain the ability to set their own legislative agendas by either accepting or rejecting the incentives, and state governmental officials remain accountable to their local electorates.¹⁰

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Footnotes

1 § 224.

2 People of State of N. Y. v. O'Neill, 359 U.S. 1, 79 S. Ct. 564, 3 L. Ed. 2d 585 (1959); Penn Dairies v. Milk Control Commission of Pennsylvania, 318 U.S. 261, 63 S. Ct. 617, 87 L. Ed. 748 (1943); Hart v. Kozik, 242 S.W.3d 102 (Tex. App. Eastland 2007).

3 BellSouth Telecommunications, Inc. v. Sanford, 494 F.3d 439 (4th Cir. 2007).

4 Huron Portland Cement Co. v. City of Detroit, Mich., 362 U.S. 440, 80 S. Ct. 813, 4 L. Ed. 2d 852, 78 A.L.R.2d 1294 (1960).

5 Koehler v. Colorado Dept. of Health Care Policy and Financing, 252 P.3d 1174 (Colo. App. 2010).

6 Application of Riverkeeper, Inc. v. Seggos, 60 Misc. 3d 462, 75 N.Y.S.3d 854 (Sup 2018).

7 State v. Department of Justice, 951 F.3d 84 (2d Cir. 2020).

Although Congress may not direct the budgetary decisions of the states, it may set conditions on the grant of federal funds to ensure their proper use. *State of Okl. v. Schweiker*, 655 F.2d 401 (D.C. Cir. 1981).

8 *New York v. U.S.*, 505 U.S. 144, 112 S. Ct. 2408, 120 L. Ed. 2d 120 (1992).

Where Congress, in exercising its spending power, places conditions on a state's receipt of federal funds, whether directly, or by delegation of clarifying authority to an executive agency, there is no commandeering of reserved state power under the Tenth Amendment, so long as the state has a legitimate choice whether to accept the federal conditions in exchange for federal funds. *State v. Department of Justice*, 951 F.3d 84 (2d Cir. 2020).

United States' conditioning of funds is permissible under the 10th Amendment if the spending is in furtherance of the general welfare, Congress does so unambiguously to the end that the states may knowingly exercise their choice to either accept or reject funds, the conditions imposed are reasonably related to a federal interest in a particular program, and no other constitutional provision provides an independent bar to the conditional grant of federal funds. *State of Cal. v. U.S.*, 104 F.3d 1086 (9th Cir. 1997).

9 State v. Department of Justice, 951 F.3d 84 (2d Cir. 2020).

10 *New York v. U.S.*, 505 U.S. 144, 112 S. Ct. 2408, 120 L. Ed. 2d 120 (1992).

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VI. Distribution of Powers of Federal and State Governments

C. Interference and Conflicts Between State and Federal Governments

1. Noninterference Between Federal and State Governments

§ 226. Enforcement of federal law by state courts

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 2330 to 2333

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Federal laws are enforceable in state courts, and such is not to be considered an interference by state courts in the nation's complicated scheme of dual sovereignty. The states possess sovereignty concurrent with that of the federal government, subject only to limitations imposed by the Supremacy Clause, and under this system of dual sovereignty, state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States, which principle applies to claimed violations of constitutional, as well as statutory, rights.¹ This relationship exists not because Congress has determined that federal courts would otherwise be burdened or that state courts might provide a more convenient forum but because the Constitution and laws passed pursuant to it are as much laws in the states as are the laws passed by state legislatures. The Supremacy Clause² makes those laws "the Supreme Law of the Land" and charges state courts with the coordinate responsibility to enforce those laws according to their regular modes of procedure.³ Under the Supremacy Clause, federal law is supreme law of the land, and state courts must enforce it in the absence of a valid excuse,⁴ and state courts are obliged to enforce rights conferred by the United States Supreme Court even if the state constitution does not provide such rights.⁵ Although a state may allocate decision-making authority among its own tribunals as it pleases, it is not free to prefer its internal processes to those of federal courts and to decline to respect federal judgments.⁶

A state court may not deny a federal right when the parties in controversy are properly before it, in the absence of a "valid excuse," and state court's excuse for denial of a federal right is not valid if it is inconsistent with or violates federal law since the Supremacy Clause forbids state courts to dissociate themselves from federal law because of any disagreement with its contents

or any refusal to recognize the superior authority of its source.⁷ However, the requirement that a state court of competent jurisdiction treat federal law as the law of the land does not necessarily include within it the requirement that the state create a court competent to hear a case in which a federal claim is presented.⁸ The Supremacy Clause is not the source of any federal rights, and certainly does not create a cause of action; it instructs courts what to do when state and federal law clash, but it is silent regarding who may enforce federal laws in court, and in what circumstances they may do so.⁹

CUMULATIVE SUPPLEMENT

Cases:

Cooperative judicial federalism presumes federal and state courts alike are competent to apply federal and state law. [McKesson v. Doe, 141 S. Ct. 48 \(2020\)](#).

[END OF SUPPLEMENT]

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Footnotes

- 1 Burt v. Titlow, 571 U.S. 12, 134 S. Ct. 10, 187 L. Ed. 2d 348 (2013); Hill v. Curtin, 792 F.3d 670 (6th Cir. 2015).
- 2 U.S. Const. Art. VI.
- 3 Howlett By and Through Howlett v. Rose, 496 U.S. 356, 110 S. Ct. 2430, 110 L. Ed. 2d 332, 60 Ed. Law Rep. 358 (1990).
- 4 Mims v. Arrow Financial Services, LLC, 565 U.S. 368, 132 S. Ct. 740, 181 L. Ed. 2d 881 (2012).
- 5 Sitz v. Department of State Police, 443 Mich. 744, 506 N.W.2d 209 (1993).
- 6 Matter of Cook, 49 F.3d 263 (7th Cir. 1995).
- 7 Mims v. Arrow Financial Services, LLC, 565 U.S. 368, 132 S. Ct. 740, 181 L. Ed. 2d 881 (2012); Howlett By and Through Howlett v. Rose, 496 U.S. 356, 110 S. Ct. 2430, 110 L. Ed. 2d 332, 60 Ed. Law Rep. 358 (1990). Lower court judges are free to note their disagreement with a decision of the Supreme Court, but the Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source. [DIRECTV, Inc. v. Imburgia, 136 S. Ct. 463, 193 L. Ed. 2d 365 \(2015\)](#).
A state may not relieve congestion in its courts by declaring whole category of federal claims to be frivolous; until it has been proven that claim has no merit, that judgment is not up to states to make. [Haywood v. Drown, 556 U.S. 729, 129 S. Ct. 2108, 173 L. Ed. 2d 920 \(2009\)](#).
- 8 Howlett By and Through Howlett v. Rose, 496 U.S. 356, 110 S. Ct. 2430, 110 L. Ed. 2d 332, 60 Ed. Law Rep. 358 (1990); Murtagh v. County of Berks, 535 Pa. 50, 634 A.2d 179 (1993).
- 9 Armstrong v. Exceptional Child Center, Inc., 575 U.S. 320, 135 S. Ct. 1378, 191 L. Ed. 2d 471 (2015).

16A Am. Jur. 2d Constitutional Law § 227

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; Karen L. Schultz, J.D.; Jeffrey J. Shampo, J.D.; and Kimberly C. Simmons, J.D.

VI. Distribution of Powers of Federal and State Governments

C. Interference and Conflicts Between State and Federal Governments

1. Noninterference Between Federal and State Governments

§ 227. Federal power as exclusive of or concurrent with state power; supremacy of federal law

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 2330 to 2333

West's Key Number Digest, [States](#) 4 to 4.19, 18.1 to 18.7

It has been stated that the powers granted by the Federal Constitution to the national government may be divided into two general classes, exclusive powers and concurrent powers, and that exclusive federal powers are of two types: those which cannot be exercised by the states under any consideration and those which cannot be exercised by the state without the express consent of Congress.¹

The United States Supreme Court has held that the states may exercise concurrent or independent power in all cases except three.²

- Where the power is lodged exclusively in the Federal Constitution
- Where the power is given to the United States and prohibited to the states
- Where, from the nature and subjects of the power, it must necessarily be exercised by the national government

The states possess sovereignty concurrent with that of the federal government, subject only to limitations imposed by the Supremacy Clause.³ By reason of the provision of the United States Constitution that the Constitution and laws passed in pursuance thereto shall be the supreme law of the land,⁴ if a law passed by a state in the exercise of its acknowledged powers comes into conflict with an Act of Congress, the state law must yield. The federal and state legislatures cannot occupy the

position of equal opposing sovereignties because the Constitution declares as supreme the laws passed by Congress.⁵ The constitutional process in our compound republic keeps power divided between two distinct governments, the federal government and the states.⁶ The principle is therefore fundamental that state laws must yield to acts of Congress within the sphere of its delegated power⁷ even though the state laws were enacted in the exercise of acknowledged or uncontested powers since giving effect to the directions of state laws which are contrary to statutes enacted by Congress pursuant to its delegated power would result in the federal statute no longer being the supreme law of the land as is required by the Federal Constitution.⁸ Hence, state legislatures⁹ and agencies¹⁰ are barred from taking action which conflicts with valid federal law.¹¹ However, where a state act is enforced in the presence of coexisting consistent national legislation, then the Supremacy Clause of the Federal Constitution is complied with since the supremacy of the laws of the United States is in no manner impaired.¹² Moreover, Congress may by statute consent to state legislation within a particular area.¹³

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Footnotes

- 1 City of Cleveland v. Piskura, 145 Ohio St. 144, 30 Ohio Op. 340, 60 N.E.2d 919 (1945).
- 2 Gilman v. City of Philadelphia, 70 U.S. 713, 18 L. Ed. 96, 1865 WL 10773 (1865); Houston v. Moore, 18 U.S. 1, 5 L. Ed. 19, 1820 WL 2123 (1820).
Where Congress, acting under one of its exclusive powers, has legislated upon a particular subject matter which is national in character and can be governed only by a uniform system, the states, or their political subdivisions, are not permitted to legislate on the same subject matter under the state police power. [City of Cleveland v. Piskura, 145 Ohio St. 144, 30 Ohio Op. 340, 60 N.E.2d 919 \(1945\)](#).
- 3 Burt v. Tittlow, 571 U.S. 12, 134 S. Ct. 10, 187 L. Ed. 2d 348 (2013); Hansen v. Group Health Cooperative, 902 F.3d 1051 (9th Cir. 2018).
- 4 § 55.
- 5 Sperry v. State of Fla. ex rel. Florida Bar, 373 U.S. 379, 83 S. Ct. 1322, 10 L. Ed. 2d 428 (1963).
- 6 Bond v. U.S., 572 U.S. 844, 134 S. Ct. 2077, 189 L. Ed. 2d 1 (2014).
- 7 Davega City Radio v. State Labor Relations Board, 281 N.Y. 13, 22 N.E.2d 145 (1939); Black v. City of Berea, 137 Ohio St. 611, 19 Ohio Op. 427, 32 N.E.2d 1, 132 A.L.R. 1391 (1941).
- 8 Davega City Radio v. State Labor Relations Board, 281 N.Y. 13, 22 N.E.2d 145 (1939).
- 9 People v. Franklin Nat. Bank of Franklin Square, 305 N.Y. 453, 113 N.E.2d 796 (1953), judgment rev'd on other grounds, 347 U.S. 373, 74 S. Ct. 550, 98 L. Ed. 767 (1954).
- 10 People v. Hudson River Connecting R. Corporation, 228 N.Y. 203, 126 N.E. 801 (1920).
- 11 Chicago and N.W. Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 101 S. Ct. 1124, 67 L. Ed. 2d 258 (1981).
Federal law rules where essential interests of the federal government are concerned unless Congress chooses to make state laws applicable. [U.S. v. 93.970 Acres of Land, 360 U.S. 328, 79 S. Ct. 1193, 3 L. Ed. 2d 1275 \(1959\)](#).
- 12 Davega City Radio v. State Labor Relations Board, 281 N.Y. 13, 22 N.E.2d 145 (1939).
- 13 City of Philadelphia v. New Jersey, 437 U.S. 617, 98 S. Ct. 2531, 57 L. Ed. 2d 475 (1978).

16A Am. Jur. 2d Constitutional Law § 228

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

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VI. Distribution of Powers of Federal and State Governments

C. Interference and Conflicts Between State and Federal Governments

1. Noninterference Between Federal and State Governments

§ 228. Power of states to provide greater protections of individual rights than required by Federal Constitution

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 2330 to 2333

West's Key Number Digest, [States](#) 4 to 4.19, 18.1 to 18.7

In the areas of individual rights and civil liberties, the United States Constitution, where it is applicable to the states, provides a floor below which state court decisions may not fall.¹ The United States Constitution provides minimum requirements for constitutional protections and states are required to ensure their laws do not provide less protection than the federal requirements; however, a state constitution can provide greater protection than its federal counterpart.² States are free to provide greater protections in their criminal justice systems although not lesser ones than the Federal Constitution requires.³ Thus, states may confer procedural protections of liberty interests that extend beyond those minimally required by the Constitution of the United States,⁴ and individual states are free to interpret their own constitutions as imposing more stringent constraints, for example, on police conduct than does the Federal Constitution although they may not interpret them as imposing less-stringent constraints.⁵

CUMULATIVE SUPPLEMENT

Cases:

Individual States may surely construe their own laws as imposing more stringent constraints on police conduct than does the Federal Constitution; but when a state chooses to protect beyond the level that the Fourth Amendment requires, these additional

protections exclusively are matters of state law. [U.S. Const. Amend. 4. Tabares v. City of Huntington Beach, 988 F.3d 1119 \(9th Cir. 2021\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 [Arnold v. Cleveland, 67 Ohio St. 3d 35, 616 N.E.2d 163 \(1993\).](#)
- 2 [Norgaard v. State, 2014 WY 157, 339 P.3d 267 \(Wyo. 2014\).](#)
- 3 [California v. Ramos, 463 U.S. 992, 103 S. Ct. 3446, 77 L. Ed. 2d 1171 \(1983\); People v. Rister, 803 P.2d 483 \(Colo. 1990\); State v. DeFusco, 224 Conn. 627, 620 A.2d 746 \(1993\).](#)
As long as the state courts provide at least as much protection as the United States Supreme Court has provided in its interpretation of the Federal Bill of Rights, state courts are unrestricted in accordng greater civil liberties and protections to individuals and groups. [Arnold v. Cleveland, 67 Ohio St. 3d 35, 616 N.E.2d 163 \(1993\).](#)
- 4 [Mills v. Rogers, 457 U.S. 291, 102 S. Ct. 2442, 73 L. Ed. 2d 16 \(1982\).](#)
State courts and legislatures are free to adopt more vigorous safeguards governing the admissibility of scientific evidence than those imposed by the Federal Constitution. [California v. Trombetta, 467 U.S. 479, 104 S. Ct. 2528, 81 L. Ed. 2d 413 \(1984\).](#)
- 5 [California v. Greenwood, 486 U.S. 35, 108 S. Ct. 1625, 100 L. Ed. 2d 30 \(1988\).](#)

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16A Am. Jur. 2d Constitutional Law § 229

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Constitutional Law

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VI. Distribution of Powers of Federal and State Governments

C. Interference and Conflicts Between State and Federal Governments

2. Federal Preemption

§ 229. Effect of action of Congress on state law; preemption, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 2330 to 2333

West's Key Number Digest, [States](#) 4 to 4.19, 18.1 to 18.7

The Supremacy Clause provides a rule of decision for determining whether federal or state law applies in a particular situation.¹ Where Congress has legislated upon a subject which is within its constitutional control² and over which it has the right to assume exclusive jurisdiction³ and has manifested its intention to deal therewith in full, the authority of the states is necessarily excluded, and any state legislation on the subject is void.⁴ The relative importance to the state of its own law is not material when there is a conflict with a valid federal law; any state law, however clearly within a state's acknowledged power, which interferes with or is contrary to federal law must yield.⁵ Moreover, the state has no right to interfere or, by way of complement to the legislation of Congress, to prescribe additional regulations and auxiliary provisions for the same purpose.⁶

Observation:

Congress's authority to act within the scope of its powers so as to displace state power is no less when the state power which it displaces would otherwise have been exercised by the state judiciary rather than by the state legislature.⁷

Perhaps less obvious but no less well established is the rule that when Congress passes a law in a field of legislation common to both federal and state governments, the Act of Congress supersedes or preempts⁸ all inconsistent state legislation.⁹ This rule is generally known as the doctrine of preemption.¹⁰ If federal law imposes restrictions or confers rights on private actors and a state law confers rights or imposes restrictions that conflict with the federal law, the federal law takes precedence and the state law is preempted.¹¹ In all cases, the federal restrictions or rights that are said to conflict with, and therefore preempt, state law must stem from either the Constitution itself or a valid statute enacted by Congress.¹² There is no federal preemption of state law in *vacuo*, without a constitutional text, federal statute, or treaty made under the authority of the United States.¹³ In some cases, a federal statute may expressly preempt state law, and recent cases have often held state laws to be impliedly preempted.¹⁴ Even when there is no express preemption, any proper application of the doctrine must give effect to the intent of Congress.¹⁵ Thus, while Congress may expressly preempt state law, even without an express provision for preemption, state law must yield to a congressional act in at least two circumstances: first, state law is naturally preempted to the extent of any conflict with a federal statute;¹⁶ and, second, state law is preempted when the scope of a federal statute indicates that Congress intended federal law to occupy a field exclusively.¹⁷

However, preemption does not occur in every case in which the federal government has legislated in a field of concurrent state-federal power.¹⁸ A state law is superseded by a congressional law only to such an extent as the two are inconsistent.¹⁹ For instance, an Act of Congress may occupy only a limited portion of the field of regulation of a particular subject matter, leaving unimpaired the right of the several states to enact regulations covering other aspects of the subject.²⁰ The preemption doctrine does not and cannot withdraw from the states either the power to regulate where the activity regulated is a merely peripheral concern of federal law or the authority to legislate when Congress could have regulated a distinctive part of a subject which is peculiarly adapted to local regulation but has not done so.²¹

Observation:

Federal law does not preempt a federal law claim alleging a violation of another federal statute; preemption is limited to conflicts between federal and state law.²²

- 2 U.S. v. Carlene Products Co., 304 U.S. 144, 58 S. Ct. 778, 82 L. Ed. 1234 (1938); Hamilton v. Kentucky
3 Distilleries & Warehouse Co., 251 U.S. 146, 40 S. Ct. 106, 64 L. Ed. 194 (1919).
Commonwealth v. Nickerson, 236 Mass. 281, 128 N.E. 273, 10 A.L.R. 1568 (1920).
- 4 The states' salutary efforts to redress private wrongs or grant compensation for past harm cannot be exerted
to regulate activities that are potentially subject to an exclusive federal regulatory scheme embodied in a
federal statute. *San Diego Bldg. Trades Council, Millmen's Union, Local 2020 v. Garmon*, 359 U.S. 236,
79 S. Ct. 773, 3 L. Ed. 2d 775 (1959).
- 5 State ex rel. Irvine v. District Court of Fourth Judicial Dist. in and for Lake County, 125 Mont. 398, 239
P.2d 272 (1951).
State laws that conflict with federal law are without effect. *Mutual Pharmaceutical Co., Inc. v. Bartlett*, 570
U.S. 472, 133 S. Ct. 2466, 186 L. Ed. 2d 607 (2013).
- 6 Free v. Bland, 369 U.S. 663, 82 S. Ct. 1089, 8 L. Ed. 2d 180 (1962); Parker v. Brown, 317 U.S. 341, 63 S.
Ct. 307, 87 L. Ed. 315 (1943); *Bicentennial Commission v. Olde Bradford Co., Inc.*, 26 Pa. Commw. 636,
365 A.2d 172 (1976).
In the American system of federalism, federal law commands primacy over state law; therefore, as between
state and federal law, any state law that interferes with or is contrary to federal law must yield. *PPL*
Energyplus, LLC v. Solomon, 766 F.3d 241 (3d Cir. 2014).
- 7 *Hines v. Davidowitz*, 312 U.S. 52, 61 S. Ct. 399, 85 L. Ed. 581 (1941); *Ex parte Anderson*, 125 Mont. 331,
238 P.2d 910 (1951); *People v. Broady*, 5 N.Y.2d 500, 186 N.Y.S.2d 230, 158 N.E.2d 817, 74 A.L.R.2d
841 (1959).
Arkansas Louisiana Gas Co. v. Hall, 453 U.S. 571, 101 S. Ct. 2925, 69 L. Ed. 2d 856 (1981); *Sperry v. State*
of Fla. ex rel. Florida Bar, 373 U.S. 379, 83 S. Ct. 1322, 10 L. Ed. 2d 428 (1963).
- 8 *Public Service Commission, Second Dist., v. New York Cent. R. Co.*, 193 A.D. 615, 185 N.Y.S. 267 (3d
Dep't 1920), aff'd, 230 N.Y. 149, 129 N.E. 455, 14 A.L.R. 449 (1920).
- 9 *Altria Group, Inc. v. Good*, 555 U.S. 70, 129 S. Ct. 538, 172 L. Ed. 2d 398 (2008); *Chicago and N.W. Transp.*
Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 101 S. Ct. 1124, 67 L. Ed. 2d 258 (1981); *Caterpillar Inc. v.*
Lyons, 318 F. Supp. 2d 703 (C.D. Ill. 2004).
A Colorado statute regarding the release of liens on public housing projects was preempted by federal law
since it directly conflicted with COBRA's requirement that the government's loan cancellation not affect
any other terms and conditions of contracts. *Housing Authority of City of Fort Collins v. U.S.*, 980 F.2d
624 (10th Cir. 1992).
- 10 *Ahern v. South Buffalo Ry. Co.*, 303 N.Y. 545, 104 N.E.2d 898 (1952), judgment aff'd, 344 U.S. 367, 73
S. Ct. 340, 97 L. Ed. 395 (1953).
- 11 *Kansas v. Garcia*, 140 S. Ct. 791 (2020).
- 12 *Kansas v. Garcia*, 140 S. Ct. 791 (2020).
Invoking some brooding federal interest or appealing to a judicial policy preference should never be enough
to win preemption of a state law; a litigant must point specifically to a constitutional text or a federal statute
that does the displacing or conflicts with state law. *Virginia Uranium, Inc. v. Warren*, 139 S. Ct. 1894, 204
L. Ed. 2d 377 (2019) (Per Justice Gorsuch, with two Justices concurring and three Justices concurring in
the judgment).
Kansas v. Garcia, 140 S. Ct. 791 (2020).
- 13 *Kansas v. Garcia*, 140 S. Ct. 791 (2020); *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 135 S. Ct. 1591, 191
L. Ed. 2d 511 (2015).
Congress is empowered to preempt state law under the Supremacy Clause by so stating in express terms.
State v. Exxon Mobil Corporation, 168 N.H. 211, 126 A.3d 266 (2015).
- 14 *New York Telephone Co. v. New York State Dept. of Labor*, 440 U.S. 519, 99 S. Ct. 1328, 59 L. Ed. 2d
553 (1979).
- 15 *In re Marriage of Robinson and Willis*, 2015 IL App (1st) 132345, 392 Ill. Dec. 711, 33 N.E.3d 260 (App.
Ct. 1st Dist. 2015).
- 16 *Kurns v. Railroad Friction Products Corp.*, 565 U.S. 625, 132 S. Ct. 1261, 182 L. Ed. 2d 116, 78 A.L.R.
Fed. 2d 677 (2012).
Complete preemption of state law claims arises in the rare circumstance where Congress legislates an entire
field of law. *Miller v. Bruenger*, 949 F.3d 986 (6th Cir. 2020).

By their nature, field preemption and conflict preemption are usually found based on implied manifestations of congressional intent; conflict preemption exists when compliance with both state and federal law is impossible, and a subset of conflict preemption referred to as "obstacle preemption" applies when the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *Sosnowy v. A. Perri Farms, Inc.*, 764 F. Supp. 2d 457 (E.D. N.Y. 2011).

18 *Presnell v. Leslie*, 3 N.Y.2d 384, 165 N.Y.S.2d 488, 144 N.E.2d 381 (1957); *Jones Metal Products Co. v. Walker*, 29 Ohio St. 2d 173, 58 Ohio Op. 2d 393, 281 N.E.2d 1 (1972).

Federal blood-plasma regulations promulgated by the Food and Drug Administration (FDA) do not preempt county ordinances and regulations incorporating by reference the federal regulations and imposing requirements beyond those contained in the federal regulations where there is a clear indication of the FDA's intention not to preempt, and there is no showing of any implicit preemption of the whole field or of a conflict between a particular local provision and the federal scheme which is strong enough to overcome the presumption that local regulation of health and safety matters can constitutionally coexist with federal regulations. *Hillsborough County, Fla. v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 105 S. Ct. 2371, 85 L. Ed. 2d 714 (1985).

19 *Kelly v. State of Washington ex rel. Foss Co.*, 302 U.S. 1, 58 S. Ct. 87, 82 L. Ed. 3 (1937).

20 *Hartford Accident & Indemnity Co. v. People of State of Illinois ex rel. McLaughlin*, 298 U.S. 155, 56 S. Ct. 685, 80 L. Ed. 1099 (1936); *In re Squires*, 114 Vt. 285, 44 A.2d 133, 161 A.L.R. 349 (1945).

21 *Chicago and N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 101 S. Ct. 1124, 67 L. Ed. 2d 258 (1981).

Only when Congress has not clearly expressed its intent to preempt state law must a court decide whether the application of state law would frustrate the purposes of the federal law; when Congress, through explicit statutory language, has unmistakably ordained that its enactment supersedes state law, state law must be invalidated under the Supremacy Clause; however, preemption should not be found unless there is an actual conflict between federal and state law. *Com. v. Federico*, 383 Mass. 485, 419 N.E.2d 1374 (1981).

22 *Bible v. United Student Aid Funds, Inc.*, 799 F.3d 633, 321 Ed. Law Rep. 712 (7th Cir. 2015).

16A Am. Jur. 2d Constitutional Law § 230

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Constitutional Law

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VI. Distribution of Powers of Federal and State Governments

C. Interference and Conflicts Between State and Federal Governments

2. Federal Preemption

§ 230. Clear statement rule for preemption of state law

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 2330 to 2333

West's Key Number Digest, [States](#) 4 to 4.19, 18.1 to 18.7, 18.11

The "clear statement" rule requires that any federal encroachment upon a state's sovereignty may be made only by a clear statement of congressional intent to do so.¹ In considering whether a federal law preempts a state law, the United States Supreme Court starts with the assumption that the historic police powers of the states are not to be superseded by the federal statute unless that was the clear and manifest purpose of Congress.² This rule of construction rests on an assumption about congressional intent: that Congress does not exercise lightly the extraordinary power to legislate in areas traditionally regulated by the states.³ Where Congress does not clearly state in its legislation whether it intends to preempt state laws, the courts normally sustain a local regulation of the same subject matter unless it conflicts with federal law or would frustrate the federal scheme or unless the courts discern from the totality of the circumstances that Congress sought to occupy the field to the exclusion of the states.⁴ The absence of statutory language indicating an intent to occupy a field weighs heavily, of course, in favor of holding that it was the intent of Congress not to occupy the field, such that field preemption does not apply.⁵

The preemption of state law by a federal statute or regulation is not favored in the absence of persuasive reasons either that the nature of the regulated subject matter permits no other conclusion or that Congress has clearly and unmistakably so ordained.⁶ In fact, the Supreme Court presumes that federal statutes do not preempt state law.⁷ The presumption against preemption of state laws dictates that a law must do "major damage" to clear and substantial federal interests before the Supremacy Clause will demand that state law surrenders to federal regulation.⁸ Absent an obvious repugnancy between the federal and state legislation,⁹

a state will be held barred, as a consequence of federal legislation, from legislating within a particular area only where the intention of Congress to exclude state action is clearly manifested.¹⁰

Congressional intent primarily is discerned from the language of the preemption statute and the statutory framework surrounding it.¹¹ Congress is not required to employ a particular linguistic formulation when preempting state law.¹² However, Congress characteristically employs the phrase "relate to," in a federal statute's preemption clause, to reach any subject that has a connection with, or reference to, the topics the statute enumerates,¹³ and the phrase "relate to" in a preemption clause of a federal statute expresses a broad preemptive purpose.¹⁴

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Footnotes

- 1 [In re Brentwood Outpatient, Ltd.](#), 43 F.3d 256, 1994 FED App. 0408P (6th Cir. 1994); [Pelt v. State of Utah](#), 104 F.3d 1534 (10th Cir. 1996).
On questions of express or implied preemption of state law, there is assumption that historic police powers of states are not to be superseded by federal statute unless that was clear and manifest purpose of Congress, especially when Congress has legislated in field traditionally occupied by states. [Altria Group, Inc. v. Good](#), 555 U.S. 70, 129 S. Ct. 538, 172 L. Ed. 2d 398 (2008).
- 2 [Arizona v. Inter Tribal Council of Arizona, Inc.](#), 570 U.S. 1, 133 S. Ct. 2247, 186 L. Ed. 2d 239 (2013); [Wisconsin Public Intervenor v. Mortier](#), 501 U.S. 597, 111 S. Ct. 2476, 115 L. Ed. 2d 532 (1991); [City of Milwaukee v. Illinois and Michigan](#), 451 U.S. 304, 101 S. Ct. 1784, 68 L. Ed. 2d 114 (1981); [Federal National Mortgage Association v. City of Chicago](#), 874 F.3d 959 (7th Cir. 2017); [Berezovsky v. Moniz](#), 869 F.3d 923 (9th Cir. 2017); [In re Northington](#), 876 F.3d 1302 (11th Cir. 2017); [Cellphone Termination Fee Cases](#), 193 Cal. App. 4th 298, 122 Cal. Rptr. 3d 726 (1st Dist. 2011).
- 3 [Arizona v. Inter Tribal Council of Arizona, Inc.](#), 570 U.S. 1, 133 S. Ct. 2247, 186 L. Ed. 2d 239 (2013); [Miller v. Bruenger](#), 949 F.3d 986 (6th Cir. 2020).
- 4 [Malone v. White Motor Corp.](#), 435 U.S. 497, 98 S. Ct. 1185, 55 L. Ed. 2d 443 (1978); [Siegel v. American Savings & Loan Assn.](#), 210 Cal. App. 3d 953, 258 Cal. Rptr. 746 (1st Dist. 1989).
- 5 [Nelson v. Great Lakes Educational Loan Services, Inc.](#), 928 F.3d 639, 367 Ed. Law Rep. 684 (7th Cir. 2019).
- 6 [Commonwealth Edison Co. v. Montana](#), 453 U.S. 609, 101 S. Ct. 2946, 69 L. Ed. 2d 884 (1981); [Siegel v. American Savings & Loan Assn.](#), 210 Cal. App. 3d 953, 258 Cal. Rptr. 746 (1st Dist. 1989).
- 7 [Bond v. U.S.](#), 572 U.S. 844, 134 S. Ct. 2077, 189 L. Ed. 2d 1 (2014).
The robust presumption against preemption militates against findings of federal preemption, especially in areas of traditional state authority; however, the presumption is not triggered when the state regulates in an area where there has been a history of significant federal presence. [PPL EnergyPlus, LLC v. Nazarian](#), 753 F.3d 467 (4th Cir. 2014), aff'd, 136 S. Ct. 1288, 194 L. Ed. 2d 414 (2016).
- 8 [Patriotic Veterans, Inc. v. Indiana](#), 736 F.3d 1041 (7th Cir. 2013).
- 9 [Fullerton v. Lamm](#), 177 Or. 655, 163 P.2d 941 (1945).
For a conflict between an Act of Congress and a state or local law to render the latter void, the repugnance or conflict must be direct and positive so that the two acts cannot be reconciled or consistently stand together. [Lincoln Federal Labor Union No. 19129 v. Northwestern Iron & Metal Co.](#), 149 Neb. 507, 31 N.W.2d 477 (1948), aff'd, 335 U.S. 525, 69 S. Ct. 251, 93 L. Ed. 212, 6 A.L.R.2d 473 (1949).
- 10 [People of State of Cal. v. Zook](#), 336 U.S. 725, 69 S. Ct. 841, 93 L. Ed. 1005 (1949); [De Veau v. Braisted](#), 5 N.Y.2d 236, 183 N.Y.S.2d 793, 157 N.E.2d 165 (1959), judgment aff'd, 363 U.S. 144, 80 S. Ct. 1146, 4 L. Ed. 2d 1109 (1960).
- 11 [California Insurance Guarantee Association v. Azar](#), 940 F.3d 1061 (9th Cir. 2019).
- 12 [Coventry Health Care of Missouri, Inc. v. Nevils](#), 137 S. Ct. 1190, 197 L. Ed. 2d 572 (2017).
- 13 [Coventry Health Care of Missouri, Inc. v. Nevils](#), 137 S. Ct. 1190, 197 L. Ed. 2d 572 (2017).
- 14 [Coventry Health Care of Missouri, Inc. v. Nevils](#), 137 S. Ct. 1190, 197 L. Ed. 2d 572 (2017).

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16A Am. Jur. 2d Constitutional Law § 231

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Constitutional Law

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VI. Distribution of Powers of Federal and State Governments

C. Interference and Conflicts Between State and Federal Governments

2. Federal Preemption

§ 231. Tests applied to determine preemption of state law

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[Validity, Construction, and Application of State Greenhouse Gas Reduction Acts and Regulations, 80 A.L.R.6th 203](#)

The United States Supreme Court has set forth three tests that it uses to determine if a state statute has been preempted or superseded:

- Whether the scheme of federal regulation is so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it¹
- Whether the federal statutes touch a field in which the federal interest is so dominant that the federal system must be assumed to preclude enforcement of state laws on the same subject²
- Whether enforcement of the state statute presents a serious danger of conflict with the administration of the federal program³

Under the Supremacy Clause, federal law may be held to preempt state law where any of the three forms of preemption may be properly applied: express preemption, field preemption, and implied conflict preemption.⁴

Express preemption occurs where a federal statute contains explicit preemptive language.⁵ Where a federal statute contains an express preemption clause, courts do not invoke any presumption against preemption but, instead, focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' preemptive intent.⁶ Although an express statement on preemption in a federal law is always preferable, the lack of such a statement does not end a court's inquiry into whether federal law preempts state law.⁷ In the absence of express preemptive language, Congress's intent to preempt all state law in a particular area may be inferred when the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress left no room for supplementary state regulation.⁸

In cases in which Congress has not explicitly provided for preemption in a given statute, state law must still yield in two circumstances: first, when Congress intends federal law to occupy the field, or, second, where it conflicts with federal law.⁹ Under "field preemption," Congress may foreclose any state regulation in a particular area, irrespective of whether state law is consistent or inconsistent with federal standards.¹⁰ Where Congress occupies an entire field, even complementary state regulation is impermissible; field preemption reflects a congressional decision to foreclose any state regulation in the area, even if it is parallel to federal standards.¹¹ When Congress legislates an entire field of law, federal law completely overrides all state law on the topic, and any state law claims implicating that field of law are completely preempted by federal law.¹² In determining whether Congress, through legislation, has so occupied a particular field as to preclude state legislation, the Supreme Court, in order to discover the boundaries of the particular field involved, will look to the federal statute itself and read in the light of its constitutional setting and its legislative history.¹³ The absence of statutory language indicating an intent to occupy a field weighs heavily, of course, in favor of holding that it was the intent of Congress not to occupy the field, such that field preemption does not apply.¹⁴

Further, a court will find preemption where it is impossible for a private party to comply with both state and federal law and where state law is obstacle to accomplishment and execution of Congress's full purposes and objectives; what is a sufficient obstacle is determined by examining the federal statute and identifying its purpose and intended effects.¹⁵

CUMULATIVE SUPPLEMENT

Cases:

Express preemption occurs when Congress defines explicitly the extent to which its enactments pre-empt state law. [Priorities USA v. Nessel](#), 487 F. Supp. 3d 599 (E.D. Mich. 2020).

[END OF SUPPLEMENT]

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Footnotes

¹ [Wisconsin Public Intervenor v. Mortier](#), 501 U.S. 597, 111 S. Ct. 2476, 115 L. Ed. 2d 532 (1991).

² [Com. of Pa. v. Nelson](#), 350 U.S. 497, 76 S. Ct. 477, 100 L. Ed. 640 (1956).

States are precluded from regulating conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance; intent to displace state law altogether can be inferred from a framework of regulation so pervasive that Congress left no room for States to supplement it or

where there is federal interest so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject. *Arizona v. U.S.*, 567 U.S. 387, 132 S. Ct. 2492, 183 L. Ed. 2d 351 (2012).

3 *Com. of Pa. v. Nelson*, 350 U.S. 497, 76 S. Ct. 477, 100 L. Ed. 640 (1956); *People v. Giese*, 95 Misc. 2d 792, 408 N.Y.S.2d 693 (Sup 1978), order aff'd, 68 A.D.2d 1019, 414 N.Y.S.2d 947 (2d Dep't 1979).

4 *Hillsborough County, Fla. v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 105 S. Ct. 2371, 85 L. Ed. 2d 714 (1985); *National City Bank of Indiana v. Turnbaugh*, 367 F. Supp. 2d 805 (D. Md. 2005), aff'd, 463 F.3d 325 (4th Cir. 2006); *C.R. England, Inc. v. Department of Employment Sec.*, 2014 IL App (1st) 122809, 380 Ill. Dec. 1, 7 N.E.3d 864 (App. Ct. 1st Dist. 2014); *Packowski v. United Food & Commercial Workers Local 951*, 289 Mich. App. 132, 796 N.W.2d 94 (2010).

Under the Supremacy Clause, Congress may preempt a state law through federal legislation, either through express language in a statute or implicitly through field preemption or conflict preemption. *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 135 S. Ct. 1591, 191 L. Ed. 2d 511 (2015).

There are three types of preemption: (1) Congress has the authority to expressly preempt state law by statute; (2) even in the absence of an express preemption provision, the scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it; and (3) federal and state law may impermissibly conflict, for example, where it is impossible for a private party to comply with both state and federal law, or when the state law at issue stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *Newton v. Duke Energy Florida, LLC*, 895 F.3d 1270, 101 Fed. R. Serv. 3d 375 (11th Cir. 2018).

5 *Murphy v. Dulay*, 768 F.3d 1360 (11th Cir. 2014).

6 *Puerto Rico v. Franklin California Tax-Free Trust*, 136 S. Ct. 1938, 195 L. Ed. 2d 298 (2016).

7 The existence of a separate statutory preemption provision does not bar the ordinary working of conflict preemption principles. *Hillman v. Maretta*, 569 U.S. 483, 133 S. Ct. 1943, 186 L. Ed. 2d 43 (2013).

8 *PLIVA, Inc. v. Mensing*, 564 U.S. 604, 131 S. Ct. 2567, 180 L. Ed. 2d 580 (2011).

9 *Hughes v. Talen Energy Marketing, LLC*, 136 S. Ct. 1288, 194 L. Ed. 2d 414 (2016); *Jones v. Rath Packing Co.*, 430 U.S. 519, 97 S. Ct. 1305, 51 L. Ed. 2d 604 (1977); *Gretsch v. Vantium Capital, Inc.*, 846 N.W.2d 424 (Minn. 2014).

10 *Buquer v. City of Indianapolis*, 797 F. Supp. 2d 905, 75 A.L.R.6th 765 (S.D. Ind. 2011).

11 *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 135 S. Ct. 1591, 191 L. Ed. 2d 511 (2015); *Cassirer v. Thyssen-Bornemisza Collection Foundation*, 737 F.3d 613 (9th Cir. 2013).

12 Field preemption of a state law arises when a state law or regulation intrudes upon a field reserved for federal regulation. *Kurns v. A.W. Chesterton Inc.*, 620 F.3d 392 (3d Cir. 2010), aff'd, 565 U.S. 625, 132 S. Ct. 1261, 182 L. Ed. 2d 116, 78 A.L.R. Fed. 2d 677 (2012).

13 *Arizona v. U.S.*, 567 U.S. 387, 132 S. Ct. 2492, 183 L. Ed. 2d 351 (2012); *Nelson v. Great Lakes Educational Loan Services, Inc.*, 928 F.3d 639, 367 Ed. Law Rep. 684 (7th Cir. 2019).

14 Complete preemption of state law claims arises in the rare circumstance where Congress legislates an entire field of law. *Miller v. Bruenger*, 949 F.3d 986 (6th Cir. 2020).

15 *Miller v. Bruenger*, 949 F.3d 986 (6th Cir. 2020).

16 "Complete preemption" and "express preemption" are different animals; unlike ordinary preemption, which does not create federal subject matter jurisdiction, complete preemption has the effect of transforming a state law cause of action into one arising under federal law because Congress has occupied the field so thoroughly as to leave no room for state law causes of action at all. *Johnson v. American Towers, LLC*, 781 F.3d 693 (4th Cir. 2015).

17 *Arizona v. U.S.*, 567 U.S. 387, 132 S. Ct. 2492, 183 L. Ed. 2d 351 (2012); *In re WTC Disaster Site*, 414 F.3d 352 (2d Cir. 2005); *Utah Coalition of La Raza v. Herbert*, 26 F. Supp. 3d 1125 (D. Utah 2014) (immigration).

18 *Nelson v. Great Lakes Educational Loan Services, Inc.*, 928 F.3d 639, 367 Ed. Law Rep. 684 (7th Cir. 2019).

19 *Hughes v. Talen Energy Marketing, LLC*, 136 S. Ct. 1288, 194 L. Ed. 2d 414 (2016); *Frank Bros., Inc. v. Wisconsin Dept. of Transp.*, 409 F.3d 880 (7th Cir. 2005).

20 A "direct conflict" exists between state and federal law, for Supremacy Clause purposes, where it is impossible for a private party to comply with both state and federal requirements. *Kaiser v. Johnson & Johnson*, 947 F.3d 996, 111 Fed. R. Evid. Serv. 377 (7th Cir. 2020).

21 As to determination of existence of conflict with state action, see § 232.

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VI. Distribution of Powers of Federal and State Governments

C. Interference and Conflicts Between State and Federal Governments

2. Federal Preemption

§ 232. Tests applied to determine preemption of state law—Conflict with state action

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West's Key Number Digest, [States](#) 4 to 4.19, 18.1 to 18.7

Basic to the ascertainment of the effect of the enactment of federal legislation upon state legislation within the same legislative area is the question whether there is an actual conflict between the federal and state legislation.¹ To determine whether a state law conflicts with Congress' purposes and objectives, the court must first ascertain the nature of the federal interest.² A court's inquiry into the scope of a federal statute's preemptive effect is guided by the rule that the purpose of Congress is the ultimate touchstone in every preemption case.³ In a preemption case, a proper analysis requires consideration of what the state law in fact does, not how the litigant might choose to describe it.⁴

Observation:

An actual conflict between a challenged state enactment and relevant federal law is unnecessary to a finding of field preemption; instead, it is the mere fact of intrusion that offends the Supremacy Clause.⁵

A test of whether both federal and state regulations may operate or the state regulation must give way is whether both regulations can be enforced without impairing the federal superintendence of the field, not whether they are aimed at similar or different objectives.⁶ Another test of whether a state statute or regulation is void under the Supremacy Clause is whether compliance with both federal and state statutes or regulations is a physical impossibility or whether the law or regulation stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.⁷ When state and federal duties create an actual conflict between state and federal law such that it is impossible for a person to obey both, federal law controls and the state law claims must be dismissed.⁸ On a claim of conflict preemption, what constitutes a sufficient obstacle to accomplishment and execution of congressional purposes and objectives is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects.⁹

Where state and federal law directly conflict, state law must give way.¹⁰ In a borderline case, where congressional authority is not explicit, the crucial question is whether state authority can practically regulate a given area; if it cannot, federal authority governs.¹¹ If state laws within a field of concurrent power are identical with those of Congress, the Court may find a congressional motive to exclude the states.¹²

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Footnotes

1 [Arellano v. Clark County Collection Service, LLC, 875 F.3d 1213 \(9th Cir. 2017\)](#); [People v. Broady, 5 N.Y.2d 500, 186 N.Y.S.2d 230, 158 N.E.2d 817, 74 A.L.R.2d 841 \(1959\)](#).

A federal statute implicitly overrides state law either when the scope of the statute indicates that Congress intended federal law to occupy the field exclusively, or when state law is in actual conflict with federal law; implied conflict preemption is found where it is impossible for a private party to comply with both the state and federal requirements, or where state law stands as obstacle to accomplishment and execution of the full purposes and objectives of Congress. [Barrus v. Dick's Sporting Goods, Inc., 732 F. Supp. 2d 243 \(W.D. N.Y. 2010\)](#).

2 [Hillman v. Maretta, 569 U.S. 483, 133 S. Ct. 1943, 186 L. Ed. 2d 43 \(2013\)](#).

3 [Hughes v. Talen Energy Marketing, LLC, 136 S. Ct. 1288, 194 L. Ed. 2d 414 \(2016\)](#); [McDaniel v. Wells Fargo Investments, LLC, 717 F.3d 668 \(9th Cir. 2013\)](#).

The touchstone of the doctrine of federal preemption is not fairness to the parties; it is congressional intent, and without clear evidence federal policy and state law are in sharp conflict, or that it would have been physically impossible to comply with federal and state requirements, a finding of preemption is inappropriate. [In re Methyl Tertiary Butyl Ether \(MTBE\) Products Liability Litigation, 739 F. Supp. 2d 576 \(S.D. N.Y. 2010\)](#).

Beginning with the presumption that matters left unaddressed in a comprehensive and detailed statutory scheme are presumably left to the disposition provided by state law, a court deciding whether federal law should preempt state law should consider the purpose of Congress in enacting the federal statute and determine whether there is a significant conflict between some federal policy or interest and the use of state law. [Mason and Dixon Intermodal, Inc. v. Lapmaster Intern. LLC, 632 F.3d 1056 \(9th Cir. 2011\)](#).

4 [Wos v. E.M.A. ex rel. Johnson, 568 U.S. 627, 133 S. Ct. 1391, 185 L. Ed. 2d 471 \(2013\)](#).

5 [PPL EnergyPlus, LLC v. Nazarian, 753 F.3d 467 \(4th Cir. 2014\), aff'd, 136 S. Ct. 1288, 194 L. Ed. 2d 414 \(2016\)](#).

As to field preemption and tests applied to determine preemption, see § 231.

- 6 Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 83 S. Ct. 1210, 10 L. Ed. 2d 248 (1963); Jones
Metal Products Co. v. Walker, 29 Ohio St. 2d 173, 58 Ohio Op. 2d 393, 281 N.E.2d 1 (1972).
- 7 Oneok, Inc. v. Learjet, Inc., 575 U.S. 373, 135 S. Ct. 1591, 191 L. Ed. 2d 511 (2015); Hillman v. Maretta,
569 U.S. 483, 133 S. Ct. 1943, 186 L. Ed. 2d 43 (2013); Maryland v. Louisiana, 451 U.S. 725, 101 S. Ct.
2114, 68 L. Ed. 2d 576 (1981); Frank Bros., Inc. v. Wisconsin Dept. of Transp., 409 F.3d 880 (7th Cir. 2005).
State laws are preempted when they conflict with federal law; this includes cases where compliance with
both federal and state regulations is physical impossibility, and those instances where challenged state law
stands as obstacle to accomplishment and execution of full purposes and objectives of Congress. [Arizona v. U.S.](#), 567 U.S. 387, 132 S. Ct. 2492, 183 L. Ed. 2d 351 (2012).
- Even when Congress has not completely displaced state regulation in a specific area, state law is nullified
to the extent that it actually conflicts with federal law, and such a conflict arises when compliance with
both federal and state regulations is a physical impossibility or when state law stands as an obstacle to the
accomplishment and execution of the full purposes and objectives of Congress. [In re WTC Disaster Site](#),
414 F.3d 352 (2d Cir. 2005).
- 8 [Guilbeau v. Pfizer Inc.](#), 880 F.3d 304 (7th Cir. 2018).
- 9 [Odebrecht Const., Inc. v. Secretary, Florida Dept. of Transp.](#), 715 F.3d 1268 (11th Cir. 2013).
- 10 [PLIVA, Inc. v. Mensing](#), 564 U.S. 604, 131 S. Ct. 2567, 180 L. Ed. 2d 580 (2011).
- 11 [Federal Power Com'n v. Transcontinental Gas Pipe Line Corp.](#), 365 U.S. 1, 81 S. Ct. 435, 5 L. Ed. 2d 377
(1961).
- 12 [People of State of Cal. v. Zook](#), 336 U.S. 725, 69 S. Ct. 841, 93 L. Ed. 1005 (1949).

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VI. Distribution of Powers of Federal and State Governments

C. Interference and Conflicts Between State and Federal Governments

2. Federal Preemption

§ 233. Effect of inaction or silence of Congress as to preemption of state law

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The mere fact that Congress has the power to legislate in regard to a certain subject does not, in all instances, exclude the right of the states to legislate on the same subject. There is a field of concurrent power in which the state may legislate until the power is actually exercised by Congress.¹ In other words, in the absence of any federal legislation on the subject, a state may enact valid statutes as to certain matters within Congress's potential control; but Congress may suspend the state laws by occupying the field in the exercise of the granted power.² Enforcement of a state act in the absence of national legislation does not violate the Federal Constitution since the supremacy of the laws of the United States is in no manner impaired.³ However, there is an important principle, commonly referred to as "the doctrine of the silence of Congress" which is sometimes applied to determine whether a state may enact regulations in a field of legislation in the absence of any direct expression of the will of the federal government.⁴

Several criteria have been established for determining when the doctrine of the silence of Congress should be applied so as to bar legislation by the several states. The power of Congress is exclusive whenever a state enactment would clearly be repugnant to the exercise of authority by the United States government⁵ or whenever the subject matter is so national in character as to require uniformity of regulation affecting all the states alike.⁶ With respect to activities carried on by the United States itself, the silence of Congress is insufficient to authorize state regulation, such regulation being impermissible where Congress does not affirmatively declare its submission to such regulation.⁷ On the other hand, where the subject matter upon which the power is to be exercised is local and limited in its nature or sphere of operation, the rule is well established that the several states

may prescribe regulations until Congress intervenes.⁸ Further, state action may be upheld where Congress has authorized the executive branch in general or a specific federal agency in particular to act in a given area but that authority has not been or never was exercised.⁹ The case for federal preemption of state law is particularly weak where Congress has indicated its awareness of the operation of state law in a field of federal interest, and has nonetheless decided to stand by both concepts and to tolerate whatever tension there is between them.¹⁰

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Footnotes

- 1 [Stellwagen v. Clum](#), 245 U.S. 605, 38 S. Ct. 215, 62 L. Ed. 507 (1918); [Quaker Oats Co. v. City of New York](#), 295 N.Y. 527, 68 N.E.2d 593 (1946), judgment aff'd, 331 U.S. 787, 67 S. Ct. 1314, 91 L. Ed. 1817 (1947).
- 2 [Parker v. Brown](#), 317 U.S. 341, 63 S. Ct. 307, 87 L. Ed. 315 (1943); [People v. Buck](#), 101 Cal. App. 2d Supp. 912, 226 P.2d 87 (App. Dep't Super. Ct. 1950), judgment aff'd, 343 U.S. 99, 72 S. Ct. 502, 96 L. Ed. 775 (1952).
- 3 [Davega City Radio v. State Labor Relations Board](#), 281 N.Y. 13, 22 N.E.2d 145 (1939).
- 4 [Staples v. U.S.](#), 511 U.S. 600, 114 S. Ct. 1793, 128 L. Ed. 2d 608 (1994).
- 5 [Bethlehem Steel Corp. v. Board of Com'rs of Dept. of Water and Power of City of Los Angeles](#), 276 Cal. App. 2d 221, 80 Cal. Rptr. 800 (2d Dist. 1969).
- 6 [Kelly v. State of Washington ex rel. Foss Co.](#), 302 U.S. 1, 58 S. Ct. 87, 82 L. Ed. 3 (1937).
- 7 [Mayo v. U.S.](#), 319 U.S. 441, 63 S. Ct. 1137, 87 L. Ed. 1504, 147 A.L.R. 761 (1943).
- 8 [People of State of Cal. v. Zook](#), 336 U.S. 725, 69 S. Ct. 841, 93 L. Ed. 1005 (1949).
Quality control of health care benefits is a field traditionally occupied by state regulation and the silence of Congress should be interpreted as reflecting an intent that it remain such. [Dukes v. U.S. Healthcare, Inc.](#), 57 F.3d 350 (3d Cir. 1995).
- 9 [Parker v. Brown](#), 317 U.S. 341, 63 S. Ct. 307, 87 L. Ed. 315 (1943).
- 10 [CTS Corp. v. Waldburger](#), 573 U.S. 1, 134 S. Ct. 2175, 189 L. Ed. 2d 62, 86 A.L.R. Fed. 2d 665 (2014); [Sciortino v. Pepsico, Inc.](#), 108 F. Supp. 3d 780 (N.D. Cal. 2015).

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